IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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:: JUDGMENT ::

Mangi Lal Vs. Fateh Singh & Ors.

S.B. CIVIL MISC. APPEAL NO.545/1994.

Against the award dated 28.05.1994 made by the Motor Accidents Claims Tribunal, Bali in Claim Case No.51/1992.

Date of Order :: 30th November 2006

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Kailash Trivedi for the appellant.
Mr. Arjun Singh for the respondents.

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BY THE COURT:

This appeal has been preferred by the claimant against the award dated 28.05.1994 made by the Motor Accidents Claims Tribunal, Bali in Claim Case No.51/1992 whereby the Tribunal has rejected the claim for compensation on account of the injuries sustained in a vehicular accident with the finding that the injured-claimant himself was responsible for the accident.

Brief facts relevant for determination of the questions involved in this appeal are that the claimant-appellant Mangi Lal submitted the claim application against the

driver and owners of the bus bearing registration No. RNP 2824 (hereinafter referred to as 'the roadways bus') with the submissions that on 12.12.1991 at about 12:45 p.m. on Sirohi-Pali Highway near power house at Sumerpur, the non-applicant No.1 Fateh Singh driving the roadways bus rashly and negligently caused the accident with the stationary motorcycle of the claimant who sustained grievous injuries including fracture on his right leg and loss of vision and now he was required to limp on a stick and became short of sight from one eye that has caused him physical and mental agony and so also deprived him of the source of his livelihood. Stating his age at 25 years, job as a tanker driver and monthly income at Rs.2,000/-, the claimant claimed compensation in all in the sum of Rs.2,41,600/-. The claim application was contested by the non-applicants and while stating general denial of the claim averments, it was asserted that the non-applicant No.1 was taking the bus in his control at a slow speed from Sirohi to Pushkar; that at about 2-3 kilometres from Sumerpur, suddenly a motorcycle driven rashly and negligently carrying three riders came from the side opposite to the driver of the bus from the main gate of GSS 132 KV Colony and hit against the body of the bus going on the road; that the claimant was taken to hospital in the vehicle and report was lodged with Sumerpur Police Station; that at the

relevant time, the claimant was under the influence of liquor; and that the accident occurred only for his fault.

After framing of the necessary issues and taking the evidence adduced by the parties, the Tribunal has proceeded to find in issue No.1 that the accident occurred exclusively for the fault of the claimant motorcyclist who, after coming to the main road from the side lane, hit against the bus proceeding in its correct side and at the prescribed speed; and the accident having occurred exclusively for his fault, the claimant was not entitled for any compensation.

Assailing the award aforesaid, the claimant has urged in this appeal that the Tribunal has not appreciated the evidence properly; that the MTO report shows that the left side bumper and indicator of the bus were broken hence the accident occurred with the front of the bus and not on its left-hand side as assumed by the Tribunal; that the accident occurred near abadi area on the side of a 24 ft. wide road and the bus driver alleges to have seen the motorcyclist before the accident and these facts establish that the accident occurred due to negligent and rash driving of the bus; that the Tribunal has not considered the facts divulged by the claimant and his witness pointing out incorrectness of the site plan Ex.3 prepared by the police; and that the bus hit the stationary motorcycle and it shows total fault of the bus driver.

Having given a thoughtful consideration to the submissions made on behalf of the appellant and having examined the entire record, this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

Overall circumstances of the case and the features available from testimony of the witnesses and so also from site inspection report leave no manner of doubt that the claimant was exclusively responsible for the accident and he has rightly been held disentitled to any compensation.

The accident occurred admittedly in broad day-light at 12.45 p.m. Admittedly, the roadways bus was going towards Sanderao from Sumerpur on the highway on its left-hand side. Admittedly, the claimant was driving the motorcycle taking two pillion riders and was coming from the power house campus located on the left-hand side of the direction of the bus. The claimant has admitted to have spotted the bus while coming out from the power house campus from a distance of about 200 feet thus,-

> “मैंने बिजली घर से निकलते वक्त रोडवेज की बस को करीब 200 फीट की दूर से देख लिया था।"

The case of the claimant has been that after coming out of the power house campus, he halted the motorcycle at the main gate of the power house and that the roadways bus hit against his stationary motorcycle. The site plan prepared by the Investigating Agency Ex.3 has been admitted correct by the claimant Mangilal AW-1 and pillion rider, Puna Ram AW-2. However, Mangilal has stated that the place of occurrence has not been shown correctly. The site plan Ex.3 shows that the road in question is National Highway No.14 having width of about 24 feet. On the left-hand side of the direction of the bus is shown a kuchcha place ('patri') about 6 feet wide. According to the claimant, the distance between the gate of the power house and the road was about 10–15 feet and that the bus hit the motorcycle that was stationed at the gate of the power house. Taking the scene of occurrence in comprehension such assertion could only be dubbed as absolutely incorrect for the simple reason that for the bus to hit a motorcycle more than 10 feet down the road on its left-hand side would have literally required it to take a direction perpendicular to the road towards the gate of power house and then to travel more than 10 feet. This could have happened only if the bus was intended to be taken inside the gate of power house or at least in that direction. The roadways bus was an Express bus

plying on its route on the National Highway and there is nothing on record to believe that the bus at all took such a sharp turn towards the gate of power house.

Another possibility of the bus swaying towards its left-hand side and then having gone diagonally towards the gate of the power house is totally ruled out for the significant reason that in the direction of the bus on its left-hand side before the main gate of power house was admittedly located a temple shown at mark 'D' in the site plan. Taking a diagonal route by the roadways bus from the main road towards the gate of power house was not possible unless the bus chose to hit the temple itself; and admittedly the bus did not do so.

The case of the claimant is effectively demolished by his witness Puna Ram AW-2 who was admittedly a pillion rider on the motorcycle at the time of accident. Puna Ram has admitted with reference to site plan Ex.3 that open land has correctly been shown in it and that there was a temple at place 'D' and that motorcycle was lying at place 'B'. The point of accident has been shown in the site plan at place 'A' on the main road but the said witness stated that accident occurred on 'patri' and then motorcycle fell at the place 'A'. According to Puna Ram, motorcycle was turned towards Sumerpur because those people were to go to Sumerpur. Puna Ram stated,-

> "यह सही है कि हमने मोटरसाइकिल को सुमेरपुर की तरफ मोड़ा था क्योंकि हमें सुमेरपुर जाना था."

Even if assertion of Puna Ram about accident occurring not on the road but just down below is taken into consideration for a moment, it is but apparent that the accident did not occur at the main gate of power house because the same has been shown situated furtherer left of 'patri'. Then, he has significantly admitted that the motorcycle was turned towards Sumerpur. This statement clearly means that the motorcycle was turned to the direction that was opposite to the direction of motion of bus because bus was coming from Sumerpur. In that scenario, when the bus was on its correct side maintaining left of the road, the motorcycle was obviously on its wrong side having taken a turn towards its right.

Once the assertion of the claimant that the bus hit the bike at the main gate of power house about 10 – 15 feet away from the main road is proved to be incorrect; and then, the accident is shown to have occurred on the extreme left hand side of the direction of motion of the bus, either on the road or just down the road; and then, the motorcycle is shown to have been turned towards its right-hand side, it is apparent that motorcyclist omitted to take caution specifically required

while taking a vehicle from the side lane to the main highway road.

When admittedly the motorcyclist had spotted the bus from a distance of about 200 feet and yet was intrepid enough to dart into the main road and to steer the vehicle towards its right-hand side and in the process hit the traffic moving on the main road on its correct side, the motorcyclist has to be exclusively held responsible for the occurrence.

It has been suggested that the site plan Ex.3 does not correctly mention the place of occurrence. However, the site plan prepared in this case (Ex.3) gives out many features that establish total fault on the part of the motorcyclist. It has been pointed out that tyre marks of the motorcycle were available coming from power house colony upto the main road. It has also been shown that left-hand side of the road for some length carried the marks of tyre of the bus and that there were about 1 ft. and 1 ½ ft. long scratches on the road from the point of accident 'A' to the point 'B' where the motorcycle was found lying. As already noticed above, the place of occurrence sought to be suggested by the claimant much down the road at the main gate of power house cannot be accepted and the cumulative effect of the testimony of the witnesses and so also the site plan is that the motorcycle came from side lane and hit against the bus moving on its

correct side on main highway. The bus was being driven in a controlled manner is also indicated by the site plan which shows that the bus was immediately put to brakes and the motorcycle was dragged only for about 1 ½ ft.

Another submission sought to be made in this appeal with reference to the mechanical inspection report of the bus that the point of impact on the body of the bus was not on its door on left-hand side but on its frontal left side remains hollow because such mechanical inspection report of the bus has not been produced on record. Ex.11 is the mechanical inspection report of motorcycle and not the bus. Be that as it may, even if it be assumed that the motorcycle collided with the bus on its front left-hand side and not on its door, the fact remains that such collision was brought about exclusively by omission of reasonable care and caution by the motorcyclist.

The claimant driving the said motorcycle remains exclusively liable for the accident and in the circumstances of the case, this Court is of opinion that had the non-applicants made any claim for property damage, the claimant would have been held responsible thereto. In any case the claimant is not entitled for any compensation as the injuries were sustained by him by use of his own vehicle with omission of care and caution and rather with gross negligence. The claim

application has rightly been rejected by the Tribunal and the present appeal remains bereft of substance.

Consequently, this appeal fails and is dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

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